THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.11482 OF 2006

Date: 26-12-2007

Between:

Narender Kumar … Petitioner

And

1.Andhra Bank,
Corporate Finance Branch,
Rep.by its Chief Manager
Situated at Ameerpet, Hyderabad
And others … Respondents

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O R D E R:

The writ petitioner Narender Kumar filed the present writ petition for a writ of mandamus declaring the notice, dated 04.5.2006, issued by Advocate Commissioner, at the instance of the respondents for vacating the premises as illegal, arbitrary and unconstitutional.

2. This court initially granted stay of dispossession for a period of one week on 12.6.2006 and on 13.6.2006 ordered notice before admission and further continued the stay of dispossession granted earlier for some more time and the same was extended and ultimately since none appeared for the respondents and no counter-affidavit had been filed the interim order already granted was extended until further orders on 10.7.2006. This court issued rule nisi on 07.6.2007 and directed the interim order granted earlier to continue until further orders.

3. R1 filed counter-affidavit and prayed for vacating the interim order.

4. Sri C.B.Ramamohan Reddy, the counsel representing petitioner and Smt. V.Dyumani representing respondents made certain submissions on the strength of the respective pleadings.

5. The petitioner states that he is a tenant in the petition schedule property comprising of Mulgies bearing No.21-6-732 to 737, situated at Chelapura, Hyderabad. The petitioner obtained the said premises on rent

from the respondents 2 to 5 on 01.4.2001. Further it is stated that respondents 2 to 5 executed a rental deed in his favour. As per the terms and conditions as agreed a sum of Rs.10,000/- has to be paid as rent per month and the tenancy was fixed for 11 months. It was also agreed that after the expiry of the period of 11 months the petitioner can continue as a tenant on the payment of enhanced rent at the rate of 10% per annum on the then existing rent as such the tenancy is still subsisting till today. Further it is stated that on 04.5.2006 petitioner received a notice from Smt.Jhansi Rani, Advocate stating that the petitioner have to deliver the vacant physical possession of the petition schedule property by 11.6.2006. The said notice was a rude shock to him as the petitioner have never defaulted in the payment of the rent or in the payment of electricity charges or property cess etc., to the respondents 2 to 5. Further it is stated that since May 2005, the respondents 2 to 5 are trying to take physical possession from the petitioner illegally in respect of the petition schedule property. Further it is stated that on enquiries the petitioner came to know that the respondents 2 to 5 with a view to evict him illegally and unauthorisedly have shown the petition schedule property as mortgaged property with the 1st respondent and said to have been obtained some loan. The said respondents 2 to 5 became the defaulters to the said loan willfully and deliberately to see that the petitioner could be evicted which otherwise could not be possible except without due process of law. The petitioner came to know that the respondents 2 to 5 have sufficient means and capacity to pay the amounts taken by them from the first respondent, but clandestinely became defaulters. However, the petitioner have nothing to do with the transaction held between the first respondent and the respondents 2 to 5 nor the petitioner as a party to that transaction. Further

it is stated that with great difficulty the petitioner pursued the matter with Smt.Jhansi Rani, Advocate, who had handed over him a notice said to have been issued by the first respondent as against the respondents 2 to 5 under Section Sarfaesi Act of 2002. It is stated that the petitioner is a lawful physical possession of the property in the capacity of tenant and the petitioner have statutory right to remain in the property until and unless the petitioner evicted by due process of law. Further certain submissions were made in paras 9, 10, 11 and 12 of the affidavit filed in support of the writ petition.

6. In the counter-affidavit filed by the Senior Manager of respondent No.1 specific stand had been taken that the writ petition is a misconceived one and liable to be dismissed. It is stated that at request of M/s Chunnilal & Sons, a partnership firm represented by its partners, the respondent Bank M.J.road branch sanctioned Open Cash Credit facility of Rs.15,00,000/- in 2202 and the said limit was renewed in 2003 and fresh facility ie., Clean Bills Purchase Limit of Rs.5,00,000/- was sanctioned in 2003 to meet the working capital requirements. The Primary security was hypothecation of stocks of Patrol, diesel and other oils. They have executed necessary documents and availed the said facilities. As security for repayment of the said facilities the respondent Nos.2 to 5 who are no other than the partners of the said firm offered the property bearing M.C.H.No.21-6-732 to 737 belonging to them as security. They have vide letter dated 1-3-2002 declared that they are the absolute owners of the said property and no one else interested therein and the said property is free from encumbrances. On the basis of the said declaration and physical verification of the property, our Bank accepted the said property as security and the respondent Nos.2 to 5 created mortgage

over the said properties on 16.5.2002 by depositing the original title deeds relating to the said properties. It is also averred that as the borrower and respondents 2 to 5 failed to liquidate the liability under OCC and CBP facility in accordance with the agreed terms. The respondent Bank was constrained to classify the account as NPA. The respondent bank was constrained to issue notice on 18.1.2005 under Section 13(2) of the Securitisation Act, 2002 demanding the borrower and respondent Nos.2 to 5 to pay Rs.20,93,409.38. The borrower and respondent Nos.2 to 5 received demand notice, but failed to pay the amount demanded in the notice. However the borrower made certain part payments. Since the borrower failed to pay the liability, the Authorised Officer of the respondent bank along with the Manager visited the Mortgage premises and tried to take possession of the property. The respondent Nos.2 to 5 were not co-operative in handing over the possession and refused to deliver peaceful possession of the property. The respondent bank was constrained to file Cr.M.P.No.1732/2006 before the Hon'ble Chief Metropolitan Magistrate, Hyderabad under section 14 of the Securitisation Act, 2002 seeking the assistance of the Hon'ble Chief Metropolitan Magistrate, Hyderabad for taking possession of the properties. The Hon'ble Chief Metropolitan Magistrate, Hyderabad appointed Smt.K.Jhansi Rani advocate as Commissioner to take possession of the mortgage assets and hand over the same to the Authorised Officer of the respondent bank. The said advocate Commissioner visited the premises to take possession. The respondent Nos.2 to 5 set up the petitioner as tenant in shop No.21-6-734 and prevented the commissioner from taking possession of the property. Then the advocate Commissioner issued notice dated 04.5.2006 fixing the date of execution of warrant on 11.6.2006. Further it is stated that the

borrower approached the respondent bank vide letter dated 22.5.2006 with a compromise proposal to pay Rs.1,00,000/- towards full and final settlement and offered to pay the same in 8 instalments. Since the offer was too low compared with the liabilities, the offer was not accepted. While the matter stood thus, respondents 2 to 5 with collusin of petitioner, got filed the present writ petition with false allegations. It is stated that under Section 14(2) of the Securitisation Act, the District Magistrate or Chief Metropolitan Magistrate may take or cause to be taken such steps and use or cause to be used such force, as may in his opinion may necessary as per Section 14(3) of the Act, 'No act of the District Magistrate or Chief Metropolitan Magistrate, done in pursuance of this section in any court or before any authority'. Further it is stated that the execution of warrant by Advocate Commissioner is only the likely action and that the petitioner indirectly he is challenging the securitisation proceedings in the present writ petition. It is stated that under Section 17 of the Securitisation Act an appeal lies before the Debts Recovery Tribunal to any party who is aggrieved by the action taken by the Authorised Officer under the provisions of the Act. The alleged lease deed is an anti dated and fabricated deed created with a malafide intention to file the present writ petition. The said deed is also hit by the provisions of Section 17(d) of the Registration Act as amended by A.P. for want of registration and cannot be looked into. Further it is stated that if really the tenancy pleaded by the petitioner is true, the petitioner ought to have filed the documents relating to TDS (Tax deducted at Source) of Income Tax, while making the payment of rent under the provisions of Income Tax Act. Further specific stand had been taken that the petitioner is an effective under the provisions of the Act and hence the petitioner cannot invoke the extraordinary jurisdiction of this court

under Article 226 of the Constitution of India.

7. In the light of the respective stands taken by the parties and also the material placed before this court, and in view of the factual controversy, which had been averred in the respective counter-affidavits by the parties, especially, in the light of the stand taken by the petitioner pleading tenancy and also in the absence of any other material placed before this court by any of the respondents, this court is of the considered opinion that it is a fit matter where the petitioner may have to invoke the alternative remedy by way of appeal. Hence, in view of the facts and circumstances, the writ petitioner is being given liberty to avail the alternative remedy, of appeal if he is so advised.

8. With the above observation, the writ petition is hereby dismissed. No order as to costs.

P.S.NARAYANA,J

26th December, 2007.

PNV

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